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SUMMARY RECORD OF THE 1049th MEETING

Held at Headquarters, New York,
on Wednesday, 3 April 1991, at 10 a.m.

Chairman: Mr. POCAR

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the United Kingdom (continued) (CCPR/C/58/Add.6, Add.11 and Add.12)

1. At the invitation of the Chairman, Mrs. Evans, Mr. Halliday and Mr. Stock (United Kingdom) took places at the Committee table.

2. The CHAIRMAN invited the Committee to resume its questioning of the United Kingdom delegation in connection with sections VI, VII and VIII of the list of issues.

3. Mr. WENNERGREN, referring to article 7 of the Covenant, asked what measures existed in the United Kingdom to give effect to the right of everyone not to be subjected to medical or scientific experiment without his free consent.

4. Turning to paragraph 33 of the supplementary report (CCPR/C/58/Add.12), he said that he understood that the period between the half-way point of a prison sentence of more than four years and its two-thirds point, at which the inmate would automatically be released on parole, appeared to be a period of discretionary power of the Parole Board. He wondered whether guidelines were envisaged for the use of that discretionary power.

5. The provision, described in paragraph 34, whereby release could be delayed by additional days to be served for misconduct, also appeared to grant discretionary power to the Parole Board.

6. It appeared that the prisoner was not regarded as a party to the question of when he or she should be granted parole, and he wondered if that entailed any incompatibility with article 16 of the Covenant, which stipulated that everyone shall have the right to recognition everywhere as a person before the law.

7. Turning to the question of life sentences, he understood that it was customary for the trial judge to write to the Home Secretary, recommending a tariff period which life prisoners should serve. It was disturbing that the procedure was not an open one, that it was not possible for the prisoner to know what the tariff period was, and that there was no appeal against it. The United Kingdom Government had stated that if a discretionary life prisoner was refused parole after the tariff period, he or she would be allowed a hearing at which the reasons for the refusal would be disclosed. However, prisoners did not know how long the tariff period was. It seemed that prisoners were not being treated as persons before the law. He asked whether the Criminal Justice Bill would include any provisions on such a hearing.

8. Mr. MYULLERSON had questions on incommunicado detention under the Prevention of Terrorism (Temporary Provisions) Act of 1989. Paragraph 115 of the third periodic report spoke of the statutory right of a detainee to have someone notified of their arrest and whereabouts and to have access to legal advice, while paragraph 112 referred to the duty of the police officer reviewing the detention to consider the need to withhold the right of the detained person to have someone informed of his arrest and to see a solicitor. He would be grateful for clarification of that apparent contradiction. He also wished to know at what point in time a person under arrest had access to a lawyer.

9. Referring to paragraph 125 of the report, he recalled that it had been explained the preceding day that compensation would be paid if arrest or detention were unlawful under the law of the United Kingdom, but not if it was unlawful under the Covenant. He asked whether that was not a violation of article 9 of the Covenant, which considered the lawfulness of an arrest not only in terms of domestic law but also in terms of rules laid down in the Covenant itself.

10. On the issue of secure accommodation, he noted that paragraph 148 of the report stated that it was part of the child-care system, not the penal system. However, "convicted youngsters" were apparently not segregated from other children requiring secure accommodation. He asked if the fact that convicted young persons were placed in secure accommodation did not in effect make such accommodation part of the penal system. He also wished to know what kind of behaviour caused a child to be sent to such accommodation and what role the parents had in the decision to commit a child to secure accommodation.

11. Mr. MAVROMMATIS noted the statement in paragraph 114 (a) of the report that in cases involving "scheduled" offences that were tried without a jury there were compensating safeguards in the form of a requirement for a written judgement and an automatic right of appeal. However, it was his understanding that those two safeguards existed in the event of any and all jury trials. He had concerns that, as explained in paragraph 114 (c), the initial onus of proof in scheduled cases was reversed, which might have an effect on the presumption of innocence. He assumed that "prescribed articles" referred to explosives and firearms, but warned that the necessity of proving intent was being abandoned. With regard to paragraph 114 (d), he asked whether the exclusion of confession evidence obtained as a result of torture or inhuman or degrading treatment extended also to confessions obtained by threats or promises, and also whether there was a difference between scheduled and ordinary offences in that regard.

12. He asked under what circumstances written statements would be allowed and whether there was any way of testing the evidential value of such statements.

13. Referring to paragraph 114 (g), he asked what the maximum punishment was for membership of a proscribed organization, whether there had been many convictions, and whether mere membership of the organization, in the absence of any other illegal activity, was in itself an offence.

14. Mr. ANDO first expressed concern about the rather vague and sweeping reservation made by the United Kingdom on ratifying the Covenant, whereby it reserved the right to apply to persons lawfully detained in penal establishments of any kind such laws and procedures as it might deem necessary for the preservation of discipline. However, detainees in penal establishments were a very heterogeneous group, which included suspects, convicted persons, adults, juveniles and people awaiting deportation or a decision on their application for entry. Clearly, different categories of detainees should receive different treatment, and he asked whether any consideration was being given to making the reservation more specific.

15. Mr. EL-SHAFEI observed that article 28 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China prohibited torture. However, article 7 of the Covenant was broader in scope, referring also to cruel, inhuman or degrading treatment or punishment. Although article 3 of the draft Bill of Rights for Hong Kong was in effect identical to article 7 of the Covenant, there was no assurance that article 7 would be implemented in its entirety, since, as the Committee had been told, the Bill of Rights would have equal status with any other law, and would thus be liable to amendment or even repeal.

16. Mr. AGUILAR, commenting on the statement in paragraph 125 of the report that payment of compensation would be considered only where unlawful detention had resulted from serious default on the part of a member of the police or some other public authority, requested a definition of serious default. The paragraph as worded implied that there were some types of error which might result in arbitrary detention, but that if they were not considered "serious" then there would not be any right to compensation.

17. He shared Mr. Mavrommatis' concern that reversal of the onus of initial proof, as described in paragraph 114 (c) of the report, amounted to a presumption of guilt. He also wished to know what the scheduled offences comprised.

18. Like Mr. Mavrommatis, he believed that the compensatory safeguards referred to for trials without jury were already in existence for jury trials. There was a need for the verdict to be in writing, and for an automatic right of appeal, both under domestic law and under the Covenant. He expressed concern about the power of arrest described in paragraph 114 (e) in respect of "any offence" on members of the armed forces. If the provision really did cover any offence at all, it would appear that - to give an absurd example - if a pickpocket stole the wallet of a soldier he could be arrested by the security forces. He wanted to know if there were any limitations on the power of arrest in such cases.

19. He also asked how far the prerogatives of the security forces extended in such areas as arrest and entry into houses and what use could be made of deadly weapons, in view of the large number of deaths in Northern Ireland. Finally, he wished to know what criteria were applied to declare an organization a proscribed organization.

20. Mr. HALLIDAY (United Kingdom), replying to the question of why a distinction had been drawn between abolition of corporal punishment in State schools or on State-funded pupils, and its continued legality in private schools, said that the Government had wished to stop short of criminalizing every form of chastisement of children. Excessive punishment of a child would be covered by the ordinary law on offences against the person.

21. In response to Mr. Lallah's question about the requirement of approval by the Attorney-General for prosecutions for torture, he explained that the purpose was to provide safeguards against prosecution in cases where the evidence was unsound or insufficient. Such a provision was far from unique in the law of the United Kingdom, being found, for example, in the legislation dealing with incitement. The provision made the position the same as that in Scotland, where there was no opportunity for private prosecution.

22. In response to Mr. Wennegren's question, he stated that any medical treatment without the consent of the patient would be an assault under the law. In addition, medical ethics applied.

23. Changes affecting the remission of sentences of imprisonment were under consideration in a new Criminal Justice Bill. The issue of additional punishment resulting from the loss of remission was currently under review, and he therefore felt it inappropriate to comment. Similarly, the questions of parole and life sentences, including issues such as the openness of the procedure and appeals, were currently under very active review, and he thought it preferable not to comment on them at the current time.

24. He did not accept Mr. Myullerson's suggestion that the Covenant needed to be incorporated to ensure compensation for unlawful arrest, as an enforceable right to compensation already existed. The relevant paragraph of the report was perhaps not sufficiently clear on that point. The question of ex gratia payments was a separate issue, and he wished to clarify that even if an arrest itself was lawful an ex gratia payment might still be made should special circumstances come to light.

25. While agreeing with Mr. Myullerson that no distinction was made between convicted and non-convicted young persons when both were placed in secure accommodation, he explained that it was felt that such a distinction was not helpful. Whether or not a young person had behaved in a manner which had resulted in a conviction might not be the crucial factor in determining his or her problems, and indeed the criminal grounds for ordering commitment to secure accommodation were being abolished, with much more emphasis being placed on the welfare of the child.

26. An example of a case in which a child would be placed in secure accommodation was that of a child who, when placed in a normal environment in the care of the local authority, such as a foster family, proved extremely difficult to control, aggressive, abusive or likely to do himself harm. The statutory criteria specified that there had to be a serious risk of harm to the young person himself or to others, and that these risks had to exist continuously.

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27. The role of parents was strengthened considerably in the Children and Young Persons Act, which provided that parents must be given their proper place in decision-making about their children at every stage.

28. Unlike in jury trials, in which the verdict of guilty or not guilty was not accompanied by any reasons whatsoever, in non-jury trials the judge was required to make a statement of his reasons for his finding. That provided new and different opportunities for basing appeals on the actual finding of guilt.

29. The provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 neither removed the right to silence nor reversed the burden of proof. The individuals concerned had to be informed of the consequences of their remaining silent but no obligation or compulsion whatsoever was involved. There was also no reversal of the presumption of innocence. The Order amended the ordinary criminal law on evidence in order to permit the court to draw such inferences as appeared proper from the fact that an accused person remained silent and, on the basis of those inferences, to treat his refusal as - or as capable of amounting to - corroboration of any evidence against him. The silence of the accused was therefore not evidence in itself but could serve to corroborate other evidence in the case.

30. There were only four situations in which such inferences could be drawn. The first was when the accused, having remained silent during police questioning, offered an explanation for his conduct for the first time during his trial. The second was when the prosecution had established that there was a case and the accused was called to give evidence in court. The third was when the accused failed or refused to explain to the police certain specified facts, such as substances or marks on his clothing. The fourth was when the accused failed or refused to account for his presence in a particular place. Only in those four situations and only when the accused opted to remain silent could an inference be drawn which might amount to corroboration of other evidence in the case.

31. With respect to the United Kingdom's reservation on article 10 of the Covenant, he observed that article 10 of the Covenant did not lay down any specific requirements regarding arrangements for prisoners. While the United Kingdom would continue to keep the matter under review, it had no intention of changing its current practice.

32. The power of the security forces to arrest people on suspicion of any offence was limited, since suspects could be detained for a maximum of only four hours. Unless the police intended to take any action under the criminal law, the person concerned would have to be released.

33. There were very strict rules governing the use of deadly weapons. He had already provided figures on the number of people who had died as a result of action taken by the security forces. In Northern Ireland, terrorist activity had resulted

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in a very much larger number of deaths and very serious injuries. There was clearly a situation of high risk in Northern Ireland and the security forces were heavily engaged in seeking to prevent and counter terrorism there.

34. Mrs. EVANS (United Kingdom) said that sections 56 and 58 of the Police and Criminal Evidence Act gave persons detained in England and Wales the right to have access to legal advice and to have someone informed of their arrest. Sections 14 and 15 of the Northern Ireland (Emergency Provisions) Act 1987 contained similar provisions. While the special circumstances of a particular case might dictate a temporary delay, both the maximum length of the delay and the circumstances in which the delay could be authorized were closely controlled. If a delay was deemed appropriate, it could be authorized only by a police officer of at least the rank of superintendent for a maximum period of 48 hours. If, during the course of those 48 hours, the reasons for delay ceased to exist, the rights of the detained person were immediately granted. Delay was justified in circumstances in which the provision of information to the person whom the accused or suspected terrorist had asked to be informed might lead to interference with or harm to evidence, cause physical injury to other persons, alert others to the situation, hinder recovery of property, lead to interference in the collection of information about terrorist acts, or make it more difficult to prevent an act of terrorism or to secure the apprehension, prosecution or conviction of a person suspected of having committed an act of terrorism.

35. The provisions of section 9 of the Northern Ireland (Emergency Provisions) Act 1978 did not in any way deny rights of a suspect or accused person under article 14 of the Covenant. Section 9 of that Act stated that, if a person had been charged with a particularly serious offence, such as possession of explosive substances, firearms or petrol bombs, and the prosecution had proved that both the accused and the particular article were found together at the time, or that the accused had occupied the premises of a building in which one of those articles had been found, then it was up to the defence to prove that the accused did not have the article in his possession.

36. With respect to the admissibility of confession statements, the law in Northern Ireland made provision for both scheduled and ordinary criminal offences. The Police and Criminal Evidence (Northern Ireland) Order contained extensive provisions relating to ordinary criminal offences and ensured that statements obtained through oppression or other forms of ill-treatment were not admissible and allowed the judge to rule on admissibility if there was any suggestion that evidence had been unfairly obtained. With respect to scheduled offences the situation was much the same. The provisions of the Northern Ireland (Emergency Provisions) Acts 1978 and 1987 were being consolidated into one clause in the bill on emergency provisions currently before Parliament.

37. Under the Prevention of Terrorism (Temporary Provisions) Act 1989, the maximum penalty for membership in a proscribed organization was imprisonment not exceeding 10 years, or a fine, or both. In summary convictions, the penalty was imprisonment not exceeding six months, or a fine of not more than £2,000, or both. The law of

(Mrs. Evans, United Kingdom)

Northern Ireland provided for similar penalties. Mere membership in a proscribed organization was considered an offence. However, in cases where a person had been a member of an organization before it had been proscribed, and where that person had not taken an active part in the organization after its proscription, there was a defence to the offence of membership. Very few organizations had been proscribed under the legislation of the United Kingdom, and those organizations had been proscribed because of their involvement in terrorism. Regrettably, she had no statistics on the number of convictions for such offences. A number of organizations had been proscribed under the Prevention of Terrorism (Temporary Provisions) Act and the current Northern Ireland (Emergency Provisions) Act. Those Acts conferred power on the Secretary of State to add to that list; the criteria for doing so were based on the organization's involvement in promoting or encouraging acts of terrorism.

38. Examples of scheduled offences under the Northern Ireland (Emergency Provisions) Act were: murder, manslaughter, riot, kidnapping, various serious offences against the person, and offences involving explosives. The Act provided that the Attorney-General for Northern Ireland could certify that, in any particular case, an offence which was included in the schedule of scheduled offences was not to be treated as a scheduled offence and that the case could be tried by jury. The criterion used by the Attorney-General was whether or not the circumstances of the offence were connected with the emergency in Northern Ireland. The schedule of scheduled offences was kept under careful review, and the Government was committed to providing a jury trial wherever possible.

39. Mr. STOCK (United Kingdom), responding to Mr. El-Shafei's observation on article 7 of the Covenant, said that, while the Covenant would be entrenched in the Hong Kong Bill of Rights and while it was true that the Bill of Rights, when enacted, could be amended or repealed, any Hong Kong legislature would be slow to amend, let alone repeal, the Bill of Rights. With respect to the Basic Law itself, Mr. El-Shafei had expressed concern that article 28 of the Basic Law dealt with torture in a way which only partly reflected article 7 of the Covenant. Article 39 of the Basic Law made it clear that the provisions of the Covenant as applied to Hong Kong would be implemented through the laws of the Hong Kong Special Administrative Region.

Right to fair trial (articles 14 and 15 of the Covenant) (section IX of the list of issues)

40. The CHAIRMAN read out section IX of the list of issues concerning the third periodic report of the United Kingdom of Great Britain and Northern Ireland, namely: (a) clarification of the statement in paragraph 210 of the report that in cases involving offences under the common law there was no time-limit in Scotland within which the trial of the accused must take place; (b) any cases of applications for payment of compensation for a miscarriage of justice under section 133 of the Criminal Justice Act 1988 and, if so, with what results; (c) with reference to paragraph 216 of the report, information regarding any

conclusions reached by the Government as to the amendments which should be made to the right of silence in England and Wales; and (d) information on whether or not the recommendation of the War Crimes Inquiry relating to the introduction of war crimes legislation had been implemented.

41. Mr. HALLIDAY (United Kingdom) said that Scotland had been in the forefront in incorporating into law specified time-limits for the hearing of cases. Those time-limits did not apply to summary offences; nevertheless, if a case was unduly protracted, the court had full discretion to strike it out. One of the reasons for making that kind of distinction was that the more serious offences were likely to result in people being remanded in custody, and it was in those cases that speedy settlement of the trial was most important. In the great majority of summary cases, people were likely to be either released on bail or simply awaiting a summons to court.

42. Referring to section IX (b), he said that, under section 133 of the Criminal Justice Act 1988, eight applications had been approved by the Secretary of State: one in 1988, five in 1989 and two in 1990. So far, one of those applications had been completed through to final payment. The procedures included independent assessment of the claim so that a recommendation for the amount could be made; inevitably, that process took time.

43. Responding to section IX (c), he said that a number of possibilities had been considered with respect to amending the right of silence in England and Wales, and that the establishment of the Royal Commission of Criminal Justice meant that it would be important to take account of any views which that Commission might express. The Royal Commission provided an opportunity to examine the matter in its widest possible context and to take account of all arrangements made for criminal trials and appeals and for dealing with allegations of miscarriages of justice.

44. With respect to section IX (d), the report of the War Crimes Inquiry had been debated in December 1989 and, in March 1990, the Government had introduced a bill the main provisions of which were to give the courts of the United Kingdom jurisdiction over the offences of murder or manslaughter committed as war crimes in Germany or German-occupied territory during the Second World War and to make arrangements for transferring the committal proceedings for any such cases to the higher court. That bill had been passed in 1990 in the House of Commons by a vote of 273 to 60. On 4 June 1990, the House of Lords had voted against the bill after its second reading, by a majority vote of 207 to 4. The Government had subsequently reintroduced the bill in identical form. On 18 March 1991, the House of Commons had completed its second reading of the bill, which was passed by a vote of 254 to 88 after its third reading on 25 March. The bill was to be debated further in the House of Lords, where there would be an opportunity to consider whether or not to give it a second reading and, if a second reading was given, whether or not to amend it, in which case any amendments would have to be considered by the House of Commons.

45. Ms. CHANET wished to know the exact mandate of the Royal Commission of Criminal Justice and whether it dealt only with penal procedure or if it also dealt with judicial structures, in particular the Court of Appeal and Privy Council. She inquired whether there was a system which guaranteed both the police and the defence equal access to evidence and, in particular, what system of legal aid existed which ensured such equality. Further, she wished to know what means the United Kingdom had for controlling and verifying evidence which the police collected. She wondered whether there was a system for obtaining expert testimony and whether experts were included on a government-controlled list or whether there was complete freedom of choice in securing the testimony of expert witnesses. She requested information on when a lawyer became involved in a case, including proceedings concerning acts of terrorism.

46. She was aware that, in certain cases, the right of appeal was possible only when a law was called into question and when the court itself gave authorization to make an appeal. That practice was not in conformity with article 14 (5) of the Covenant, and she requested information regarding the situation in the United Kingdom; specifically, she wished to know whether the right of appeal was guaranteed absolutely.

47. Referring to judicial errors and ways to remedy them, she requested the delegation of the United Kingdom to explain what had led to the error in the Birmingham Six case and why the error had not been discovered for six years.

48. She repeated her question concerning the right to remain silent, and whether it was in keeping with the provisions of article 14 (3) (g) of the Covenant, for she said it was clear from the answer given that she had not made herself plain. What she wanted to know was the consequences and the impact of remaining silent with respect to a person's guilt, whether, in fact, his decision to remain silent was considered as one element among others in judging his guilt or innocence or whether it was considered tantamount to the admission of guilt.

49. Mr. AGUILAR asked about access to evidence by the parties, especially the accused, in cases brought under terrorism legislation, or by the legal representatives or relatives of persons killed or injured apparently as a result of terrorism. The information provided suggested that such access was possible only once the trial was under way, whereas access by the State was possible from the time the act was committed. There seemed to be a degree of inequality in that regard.

50. With respect to the verification and corroboration of evidence in the hands of the police, especially confessions made while in police custody prior to trial, he asked when the accused had the right to legal counsel, and whether he had such access at every stage, including the time when he was making his statement to the police.

(Mr. Aguilar)

51. He requested further information concerning Scotland where, according to paragraph 118 of the report, evidence would be declared inadmissible if it were shown that a statement made by a suspect in answer to a police question had been obtained under duress. In particular, he asked who bore the burden of proof in that regard.

52. With respect to the right of appeal by persons not being charged under terrorism legislation, it appeared from paragraph 114 of the report that there was no right of appeal in the United Kingdom, which was contrary to what he had always believed; he requested clarification of the point.

53. As for the right to remain silent, he had been very concerned about the cases of the Guildford Four and the Birmingham Six and other cases, such as the disturbances at the Broadwater Farm Estate in London, where there had been allegations about statements obtained by the police in which duress had been employed to extract confessions and evidence fabricated. One of the most important elements in article 14 of the Covenant was the independence of the judiciary, and the various checks and balances which existed in other legal systems. However, as he understood it, the highest court of appeal in the United Kingdom was the House of Lords, which was a non-elected, and for the most part hereditary, section of the legislature; he sought clarification as to whether the Law Lords could at the same time sit in the House of Lords and act as legislators. He also asked how judges were appointed and by whom, especially as far as the highest courts were concerned; to whom were the judges accountable and was there a system of checks and balances. Finally, he requested clarification concerning the role of the Lord Chancellor, who appeared to belong to all three branches of government - the executive, the legislature and the judiciary.

54. Mr. SADI asked why the jurisdiction over war crimes envisaged by the United Kingdom would extend to war crimes relating to the Second World War and occurring in Germany and German-occupied territory. He also asked why proposed legislation provided for jurisdiction over war crimes only in respect of British citizens or residents of the United Kingdom, while under international law such jurisdiction would cover any person apprehended in the United Kingdom.

55. Mr. EL-SHAFEI expressed concern with regard to article 23 of the Basic Law of the Hong Kong Special Administrative Region which stated that laws would be enacted to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies. Many foreign political organizations or bodies were entirely harmless, and contact with them could be regarded only as beneficial, and he was worried about the very restrictive language of article 23 of the Basic Law, which seemed to run counter to the spirit of article 22 of the Covenant. He also wondered whether the courts in Hong Kong were entitled to deal with crimes of treason, secession, sedition, subversion against the Central People's government or theft of State secrets since the commission of such crimes would probably involve foreign Governments or their agents.

(Mr. El-Shafei)

56. Article 19 of the Basic Law also gave him cause for concern because there seemed to be a contradiction in its statement that the courts would have no jurisdiction over acts of State such as defence and foreign affairs. It was his view that confusion might be created for the courts themselves. With reference to the second paragraph of article 19 and article 81 of the Basic Law concerning the establishment of a Court of Final Appeal, he asked how the judicial system in Hong Kong would be maintained after 1997.

57. Mr. DIMITRIJEVIĆ asked what the terms of reference of the Royal Commission on Criminal Justice were and whether any improvements could be made to the criminal justice system in England and Wales pending receipt of the Royal Commission's report in two years' time. He also asked whether the right guaranteed under article 14 of the Covenant to have one's conviction and sentence reviewed by a higher tribunal according to law was fully guaranteed in the United Kingdom. With respect to the provisions of article 14 (3) (d) of the Covenant regarding free legal aid, he asked what mechanism existed for obtaining legal aid and whether the Government of the United Kingdom was considering any improvements in its provision in view of reports which he had read in British newspapers to the effect that free legal aid tended to be of poor quality and that lawyers were reluctant to undertake such assignments anyway.

58. Mr. LALLAH asked if any measures were taken to ensure that prosecution was not delayed, for in cases where prosecution took place after a delay of many years a problem arose for the accused, who might be inhibited in conducting his defence, possibly finding that witnesses had disappeared. He also asked about a case involving a police officer in Hong Kong, with a good record of service, who had been irregularly dismissed, and who had taken more than 10 years to clear his name and secure compensation in the form of back pay. Specifically, he wanted to know the length of time which trials in Hong Kong took in cases where someone was deprived of a livelihood for a number of years.

59. Mr. HALLIDAY (United Kingdom) said, in answer to one of the questions raised by Ms. Chanet, that while it had been customary in England and Wales to characterize the legal system there as adversarial, by comparison with the inquisitorial system that existed on the continent of Europe, that distinction was too simple and the system in England and Wales was becoming more inquisitorial. That aspect would be considered by the Royal Commission on Criminal Justice.

60. The mandate of the Royal Commission on Criminal Justice was to examine the effectiveness of the criminal justice system in England and Wales in securing the conviction of those guilty of criminal offences and the acquittal of those who were innocent, having regard to the efficient use of resources, and in particular to consider whether changes were needed in the conduct of police investigations and their supervision by senior police officers, and in particular the degree of control that was exercised by those officers over the conduct of the investigation and the gathering and preparation of evidence; the role of the prosecutor in supervising the gathering of evidence and deciding whether to proceed with a case, and the arrangements for the disclosure of material, including unused material, to

(Mr. Halliday, United Kingdom)

the defence; the role of experts in criminal proceedings, their responsibilities to the court, prosecution and defence, and the relationship between the forensic science services and the police; the arrangements for the defence of accused persons, access to legal advice and access to expert evidence; the opportunities available for an accused person to state his position on the matters charged and the extent to which the courts might draw proper inferences from primary facts, the conduct of the accused, and any failure on his part to take advantage of an opportunity to state his position; the powers of the courts in directing proceedings, the possibility of their having an investigative role both before and during the trial, and the role of pre-trial reviews; the courts' duty in considering evidence, including uncorroborated confession evidence; the role of the Court of Appeal in considering new evidence on appeal, including directing the investigation of allegations; and the arrangements for considering and investigating allegations of miscarriages of justice when appeal rights had been exhausted.

61. Any changes in the criminal justice system in England and Wales were dependent on the outcome of the inquiry of the Royal Commission.

62. As for the equality of defence and prosecution under the current arrangements and the disclosure of evidence, there was a presumption in the law that the prosecution would make full disclosure of its case to the defence, and the Attorney-General of the United Kingdom had issued clear guidelines to prosecutors to ensure that that obligation was fully carried out. In any event, the matter fell within the terms of reference of the Royal Commission.

63. On the verification of evidence before trial, he said that the recommendations made some 10 years earlier by the Royal Commission on Criminal Procedure had led to the creation of the Crown Prosecution Service, which now handled all prosecutions in England and Wales; in Scotland, the Procurator Fiscal System had already been in existence. Whereas in the past the police had handled a great many of their own prosecutions, there was now full exposure of police evidence to qualified prosecuting authorities who could and frequently did ask for police inquiries to be continued and could and frequently did decide that the evidence presented was not sufficient to warrant prosecution.

64. In answer to another question raised by Ms. Chanet, he said that there was no approved list of expert witnesses as such for the use of prosecution and defence, although there was a forensic science service, provided by the Home Office, most of whose work was done for the police but whose services were also available to the defence. Other professional experts could be called by either party, and their credibility, background and expertise were fully tested in the court proceedings.

65. Access to legal advice was in principle available immediately after arrest, although in terrorist cases that access might be withheld for 48 hours.

66. As for the right of silence, there was a requirement that a formal warning be given by the police that anything said might be used as evidence, so a suspect was clearly notified that he was not obliged to say anything.

(Mr. Halliday, United Kingdom)

67. With regard to appeal rights, appeals from the Crown Court might be made on any ground involving a question of law alone, but on any ground involving a question of fact or a mixture of law and fact, or on any other ground which was regarded as sufficient, leave of the Court of Appeal was required, and once a certificate of leave had been granted the appeal had to be heard. In Scotland, no such leave was required. It was the opinion of the Government of the United Kingdom that those arrangements were consistent with its obligations under article 14 (5) of the Covenant.

68. On the question concerning onus of proof with regard to the admissibility of evidence, he said there was nothing he could add to what had already been said in answer to previous questions by Mrs. Evans.

69. The concern expressed about police malpractice was fully shared by the United Kingdom authorities, and it had indeed been as a result of the efforts of the Government's forensic science service that some of that malpractice in terms of interference with statements had been discovered, brought to light and put back before the courts in order to secure the necessary redress for those concerned. Substantial safeguards had been introduced following the report of the Royal Commission on Criminal Procedure; there was also the complaints procedure with its independent element. It should be said that despite the existence of some very well publicized and important cases that gave rise to concern, the vast majority of criminal cases were dealt with in an entirely satisfactory manner.

70. He acknowledged that difficulties arose when dealing with an unwritten Constitution, although there was great concern in the United Kingdom to maintain the separation of powers, and the independence of the judiciary was highly prized.

71. For the benefit of Mr. Aguilar he explained that the final court of appeal was not the House of Lords itself, but the Law Lords. The Lord Chancellor did appoint the higher judiciary, but entirely on the basis of expertise and experience, and it was not a matter of controversy in the United Kingdom.

72. On the subject of war crimes, he said that the Government of the United Kingdom did not believe that without the War Crimes Bill it would have the necessary jurisdiction over non-British citizens in the circumstances dealt with by that Bill, although the Geneva Conventions Act, 1957, was sufficient to deal with conflicts subsequent to that date.

73. Replying to Mr. Dimitrijević's questions, he said that the United Kingdom Government had done a great deal in the field of legal reform over the past five years. It would take no further action, however, until the Royal Commission currently at work had submitted its report. That Commission had been given a very broad mandate and had been asked to complete its report within two years. Both those facts were an indication of the Government's continued interest in legal reform.

(Mr. Halliday, United Kingdom)

74. The question of the quality of legal aid was a matter of some debate in the United Kingdom. It was a complicating factor that the use of such aid, which was freely available in both civil and criminal cases, had greatly increased in recent years. A review of the question of eligibility with respect to legal aid was currently in progress and the concern expressed by Mr. Dimitrijević would no doubt be taken into account as part of that review.

75. Replying to another question, he said that the courts were able to intervene in cases where they considered that there had been undue delay and had in fact done so recently.

76. Mr. STOCK (United Kingdom) said, in reply to Mr. El-Shafei's question about Hong Kong, that the courts did have jurisdiction over crimes of sedition and treason. Replying to the question relating to article 23 of the Basic Law, he said that the laws referred to were those to be enacted by the Hong Kong Special Administrative Region. In connection with the question relating to article 19, he pointed out that it was expressly provided that jurisdiction of the courts would be limited only by the existing legal system; with respect to paragraph 3 of article 19, he would point out that some questions, such as that of the recognition of States, were referred to the Executive. The Privy Council would cease to exist after 1997, but annex I, section 3 of the Sino-British Joint Declaration provided for the establishment of a new Court of Final Appeal. In connection with Mr. Lallah's question concerning the long delay in resolving the case of the auxiliary policeman, he agreed that the case had indeed taken a long time but assured the Committee that the delay was quite unrepresentative of what usually happened in civil cases.

Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant) (section X of the list of issues)

77. The CHAIRMAN read out section X of the list of issues concerning the third periodic report of the United Kingdom of Great Britain and Northern Ireland, namely: what difference was there between expulsion and exclusion, as referred to in paragraphs 202 to 204 of the report.

78. Mr. HALLIDAY (United Kingdom) said that exclusion was a term used in cases of suspicion of involvement in terrorist activities. The term "expulsion" was not used in legislation but referred in general to the removal of aliens from the United Kingdom by the Government under its immigration powers. The "exclusion" power was directed towards ensuring that where grounds for suspicion of involvement in terrorist offences existed the person suspected might be excluded from Great Britain, Northern Ireland or the United Kingdom, subject to the provisions concerning citizenship and residence.

Right to privacy (article 17 of the Covenant) (section XI of the list of issues)

79. The CHAIRMAN read out section XI of the list of issues concerning the third periodic report of the United Kingdom of Great Britain and Northern Ireland, namely: the effectiveness of the measures introduced under the Data Protection

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Act 1984 to safeguard the privacy of "data subjects" and whether the Act was applicable to all the dependent territories.

80. Mr. HALLIDAY (United Kingdom) said it was the Government's belief that the Act had been generally successful in accomplishing its purpose. The Act did not apply in the dependent territories. However, information in the territories was protected by rules of confidentiality and any breach of that confidentiality would be dealt with appropriately.

Freedom of expression, prohibition of propaganda for war and incitement to national, racial or religious hatred and freedom of association (articles 19, 20 and 21 of the Covenant) (section XII of the list of issues)

81. The CHAIRMAN read out section XII of the list of issues, namely: with reference to paragraphs 258 and 259 of the report, whether there had been any evolution in the Government's position in respect of legislation relating to blasphemy and blasphemous libel; (b) whether the 1989 Official Secrets Act encompassed defence of the public good and applied to the dependent territories; (c) information on the effects of the Broadcasting Ban of 1988 and the outcome of the judicial review referred to in paragraph 265 of the report; (d) information on the 1989 Broadcasting Bill and its effect on freedom of expression; (e) information on the role of the new Radio Authority and whether it could act as a censor; (f) the status of the proposal to replace the Press Council with a Press Complaints Commission, and the latter's competence; and (g) whether there were any legal criteria for determining that an organization should be proscribed under the Prevention of Terrorism Act of 1989.

82. Mr. HALLIDAY (United Kingdom) said the Government was aware that the current legal situation with regard to blasphemy was unsatisfactory. However, there was a division of opinion within the United Kingdom between those who wished to abolish the legislation on the subject and those who wished to extend it further. The Government did not believe that the necessary consensus existed to change the legal situation. There were, however, other means of preventing the behaviour in question. With respect to the Official Secrets Act, he said that it made no provision for a "public good" defence; the Act was concerned with matters involving "serious harm to the interests of the country" and in such cases innocence of intent was irrelevant as well as too easy to claim and too difficult to disprove. The Act had not yet been extended to the dependent territories, although it made provision for such an extension. It was difficult to evaluate the effects of the Broadcasting Ban, but the general impression was that it had been highly effective. The outcome of the judicial review referred to in the report had been that the Government's action had been upheld by the House of Lords. The Government believed that the deregulation of broadcasting under the 1989 Broadcasting Bill should lead to greater freedom of expression. The role of the new Radio Authority was to license and regulate broadcasting; its powers had been clearly defined and limited in the Act establishing it. The Press Complaints Commission had been established by the press itself in response to widespread complaints about the press. The Government had supported that initiative, but it remained to be seen

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how effective the Commission would be and whether public pressure to regulate the press would subside as a result of its activity. The question of legal criteria for proscription under the Prevention of Terrorism Act had been dealt with in his reply to an earlier question.

Right to participate in the conduct of public affairs (article 25 of the Covenant) (section XIII of the list of issues)

83. The CHAIRMAN read out section XIII of the list of issues, namely: (a) comments on the Government's plans, if any, for affirmative action to promote the greater opportunities for the employment of members of ethnic minorities and women in the judiciary, Parliament, local government and the higher grades of the civil service; and (b) the legal basis for "positive vetting" for certain candidates for the civil service how the criterion of susceptibility to pressure from communist, Fascist or subversive organizations and groups had been interpreted in practice and whether a remedy existed for the unsuccessful candidate.

84. Mr. HALLIDAY (United Kingdom) said that the Government was determined to carry out its equal opportunity programme. The Employment Act of 1989 had made it possible for employers to offer training to members of particular ethnic groups and positive action had also been taken within the civil service in favour of women and members of ethnic minorities. He noted that the proportion of women among non-industrial staff in the civil service stood at 48 per cent and that the proportion of women at the higher levels had increased from 29 per cent in 1983 to 43 per cent. The Government had recently adopted the specific objective of increasing the representation of ethnic minorities at the executive officer level. In the case of the judiciary, judicial appointments were a matter for the professional bodies concerned; however he would point out that the Bar Council had recently taken positive action to help barristers belonging to ethnic minorities to develop the requisite experience and that the first black female Queen's Counsel had recently been appointed. Representation in Parliament was a matter for the political parties to act on, but all the parties were in fact sensitive to the need to take further action in that area.

85. The revised procedures for "vetting" of certain candidates for the civil service had been set out fully in the Prime Minister's statement on the subject of 24 July 1990, which he could make available to members of the Committee. It was impossible to deal with the question of susceptibility to pressure without going into individual cases; with respect to remedy, however, anyone who felt unfairly treated could bring the matter to an independent tribunal or the permanent head of the department concerned.

Rights of persons belonging to minorities (article 27 of the Covenant) (section XIV of the list of issues)

86. The CHAIRMAN read out section XIV of the list of issues, namely: information about groups and approximate numbers of members of ethnic minorities.

87. Mr. HALLIDAY (United Kingdom) said that the question had been answered in his Government's supplementary report to the Committee. He would add, however, that a question concerning ethnic minorities would be included in the census which would be taken later in April 1991.

The meeting rose at 1 p.m.